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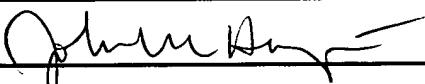
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Serial No.: 09/535,877

Date Filed: March 28, 2000

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Catherine A. Johnson
Catherine A. Johnson



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: BOYLE, Terence, et al.
 Application No.: 09/535,877
 Filed: March 28, 2000
 For: **SYSTEM AND METHOD FOR CENTRALIZED
 AUTOMATED RECONCILIATION OF CUSTODY
 ACCOUNTS**
 Examiner: Chencinski, Siegfried E.
 Group Art Unit: 3628

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief-Patents
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Sir:

This is an Amended Appeal Brief under 37 C.F.R. § 41.37 in connection with the decision of the Examiner mailed on December 1, 2005 and is filed in response to the Examiner's Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed June 14, 2006 in which the Examiner contended that the Appeal Brief filed on May 1, 2006 was defective for failure to comply with one or more provisions of 37 CFR 41.37, namely:

- “1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order” maintaining by way of explanation that “Section (v) should be titled “Summary of Claimed Subject Matter”.

- 4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the appeal brief fails to (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 42.37(c)(1)(v))" maintaining by way of explanation that "Section (v) is missing the references to the drawings as per item 4 above".

Regarding the Examiner's statement that "Section (v) should be titled "Summary of Claimed Subject Matter"", while Section (5) of the Appeal Brief is clearly a concise explanation of the subject matter of each of the independent claims involved in the appeal, in keeping with the Examiner's mandate, the heading of Section (5) in this Amended Appeal Brief is changed from "Summary of the Invention" to "Summary of the Claimed Subject Matter".

Regarding the Examiner's statement that "Section (v) is missing the references to the drawings as per item 4 above", while Section (5) of the Appeal Brief is replete with references to the specification by page and line number, likewise in keeping with the Examiner's mandate, references to the drawings are added in this Amended Appeal Brief .

It is believed that the Amended Brief fully complies with all provisions of 37 CFR 41.37(c) and that each of the topics required by § 41.37 is presented herewith and is labeled appropriately. It is not believed that any additional fees are due, but if so, please charge any deficiency to Deposit Account No. 50-1458.

(1) Real Party In Interest

The real party in interest is Crossmar, Inc.

(2) Related Appeals And Interferences

There are no other appeals or interferences related to this case.

(3) Status Of Claims

Claims 1-4, 8, 10-15, 17-21, 23, 26, 30-35, 39, 41-43, 46, and 49-51 are pending and all have been rejected.

Claims 5-7, 16, 22, 24, 25, 27-29, 36-38, 40, 44-45, 47, and 48 have been cancelled.

No claims have been withdrawn.

No claims have been allowed.

Claims 1-4, 8, 10-15, 17-21, 23, 26, 30-35, 39, 41-43, 46, and 49-51 are hereby appealed.

(4) Status of Amendments

There are no amendments after final rejection.

(5) Summary Of The Claimed Subject Matter

Independent claims 1 and 37 propose, respectively, a method and system for reconciliation of fund manager and custodian account records, that involves receiving a first account record by a database electronically from one of an internal portfolio tracking system of a fund manager and a custody network of a custodian and receiving a second account record by the database from the other of the internal portfolio tracking system of the fund manager and the custody network of the custodian. See, e.g., Specification, page 3, lines 8-28; page 10, lines 17-24; and Fig. 2.

Independent claims 1 and 37 further propose allowing the fund manager and the custodian to predefine matching rules for the respective account records independently of one another, and automatically comparing the account records by a

computer application according to the predefined matching rules for at least one item of account data selected from a group of account data items consisting of account number, security identification, units, unit cost, total cost, unit price, and total market value to identify one of matched and unmatched first and second account records.

See, e.g., Specification, page 3, line 29-page 4, line 14; page 10, line 25-29; page 15, lines 17-18; and Figs. 2 and 4.

Additionally, independent claims 1 and 35 propose if unmatched account records are identified in the comparison, generating a report of the comparison by the computer application identifying the unmatched account records accessible for display by the fund manager and the custodian, allowing a manual match of the unmatched account records on the database by either one of the fund manager and the custodian, and storing an historical record of the manual match by the computer application accessible by either one of the other of the fund manager and the custodian. See, e.g., Specification, page 4, lines 15-25; page 10, line 29-page 11, line 2; page 15, lines 19-20; and Figs. 2 and 4.

(6) Grounds of Rejection to be Reviewed on Appeal

- a) Claims 1, 11-15, 17-20, 30-35, 42, 43, 50 and 51 stand rejected under 35 U.S.C. 103(a) as being obvious over Hawkins (U.S. Patent No. 6,247,000).
- b) Claims 2-4, 8, 10, 26, 39, 41, 46 and 49 stand rejected under 35 U.S.C. 103(a) as being obvious over Hawkins (U.S. Patent No. 6,247,000) in view of Harris (U.S. Patent No. 5,517,406).
- c) Claims 21 and 23 stand rejected under 35 U.S.C. 103(a) as being obvious over Hawkins (U.S. Patent No. 6,247,000) in view of Josephson (U.S. Patent No. 5,689,579).

(7) Argument

The Rejection of Claims 1, 11-15, 17-20, 30-35, 42, 43, 50 and 51 as Obvious Over Hawkins Is Improper

Independent claims 1 and 35, claims 11-15, 17-20, and 30-34 depending on claim 1, and claims 42, 43, 50 and 51 depending on claim 35 stand rejected as obvious over Hawkins. Regarding independent claims 1 and 35, the Examiner considers that Hawkins teaches each and every element of independent claims 1 and 35, except allowing the fund manager and the custodian to predefine matching rules for the respective account records independently of one another, which the Examiner considers to be obvious “in order to develop an efficient automated system for reconciling securities account records between a securities custodian and a fund manager.”

On the contrary, rather than a method and system for reconciliation of fund manager and custodian account records, as recited in independent claims 1 and 35, respectively, Hawkins discloses a method and system for matching brokers’ orders and confirmations. See, e.g., Hawkins, Col. 7, lines 18-30. Instead of receiving a fund manager’s account record from a fund manager and a custodian’s account record from the custodian, as recited in claims 1 and 35, according to Hawkins, an originating broker’s order is received and associated with the broker’s delivery instructions and both are sent to an executing broker, who fills the order and sends a confirmation message back to the server. See, e.g., Hawkins, Col. 9, lines 15-49.

As conceded by the Examiner, Hawkins fails to disclose automatically comparing the account records by a computer application according to predefined matching rules, which the fund manager and the custodian are allowed to predefine independently of one another, for at least one item of account data consisting of one or more of account number, security identification, units, unit cost, total cost, unit price, and total market value to identify one of matched and unmatched first and second account records, as recited in claims 1 and 35, which the Examiner considers to be obvious “based on the disclosures of Hawkins”.

Alleging that it would be obvious to modify Hawkins' method and system for matching brokers' orders and confirmations, the Examiner cites as the sole advantage "in order to develop an efficient automated system". In view of this alleged advantage, the Examiner reasons that "it would have been obvious for an ordinary practitioner of the art...based on the disclosures of Hawkins to include the step of allowing the fund manager and the custodian to predefine matching rules for the respective account records independently of one another".

The Examiner has failed to establish a *prima facie* case of obviousness. On the contrary, the Examiner's reasoning represents a case of impermissible hindsight reconstruction, in which the Examiner's finding of a motivation to modify Hawkins rests on a generalized statement of an advantage without regard to the desirability or the feasibility of modifying Hawkins.

The Examiner's assertion pertaining to the advantage of modifying Hawkins' broker order and confirmation matching system to include comparing account records according to predefined matching rules which a fund manager and a custodian are allowed to predefine independently of one another, as recited in claims 1 and 35, advanced by the Examiner for the purpose of showing motivation for the proposed modification, is set forth without any supporting citations to relevant portions of either Hawkins or any other authority.

For example, the Examiner's allegation that the modification of Hawkins would have been obvious "in order to develop an efficient automated system for reconciling securities account records between a securities custodian and a fund manager" is made axiomatically in justifying the modification Hawkins, but the Examiner has not identified in the record any source of information—either from the references cited or otherwise—from which the Examiner bases his assertion of advantage.

Moreover, the modification of Hawkins proposed by the Examiner would render the Hawkins method and system for matching broker's orders and confirmations unsatisfactory for its intended purpose. It is well settled that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

According to Hawkins, when an executing broker downloads an originating broker's order message with the originating broker's standing delivery instructions (used by the clearing agents to settle the trade) and fulfills the order, the executing broker sends a confirmation message to the server, and if the executing broker's and the originating broker's messages match, the system develops a time-stamped message notification that the transaction was completed. See, e.g., Hawkins, Col 9, line 5-Col 10, line 7.

Further, according to Hawkins, the server matches the executing broker's confirmation against the originating broker's order "in the background without user intervention". See, Hawkins, Col. 15, lines 29-33. Additionally, the matching process in Hawkins is performed according to matching rules dictated by the system, i.e., "MT52x (SWIFT message) settlements are matched with MT518 (SWIFT message) confirms and MT592 (SWIFT message) cancel settlements are only matched with previously matched MT518 confirms." See, e.g., Hawkins, Col. 23, lines 4-15.

It is readily apparent that the Examiner's proposed modification of Hawkins to allow the originating and executing brokers to predefine the matching rules independently of one another, as recited in claims 1 and 35, would render Hawkins' broker order and confirmation matching system completely inoperable for its intended purpose. For example, under the Examiner's proposed modification of Hawkins, an originating broker could never be certain that his/her order was fulfilled by the

executing broker strictly according to the terms of the order, if the order was matched with the executing broker's confirmation according to matching rules independently defined by the executing broker. It is equally apparent that, under Examiner's proposed modification of Hawkins, the executing broker could never be certain that fulfilling the originated broker's order strictly according to its terms would result in a completed transaction, if the executing broker's confirmation was matched with the order according to matching rules independently defined by the originating broker.

Consequently, Hawkins fails to disclose or suggest the required combination of limitations of independent claims 1 and 35 of Applicants' claimed method and system for reconciliation of fund manager and custodian account records. Because the cited reference fails to teach or suggest all of the limitations of independent claims 1 and 35, the Examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (C.C.P.A., 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); See also MPEP §2143.03. The Examiner has failed to establish the required *prima facie* case of unpatentability for independent claims 1 and 35 and similarly has failed to establish a *prima facie* case of unpatentability for claims 11-15, 17-20, and 30-34 that depend on claim 1 and claims 42, 43, 50 and 51 that depend on claim 35, and which recite further specific elements that have no reasonable correspondence with the references.

**The Rejection of Claims 2-4, 8, 10, 26, 39, 41, 46 and 49 as
Obvious Over Hawkins in view of Harris Is Improper**

Claims 2-4, 8, 10, and 26 depending on independent claim 1 and claims 39, 41, 46 and 49 depending on independent claim 35 stand rejected as obvious over Hawkins in view of Harris. As noted above, because Hawkins fails to disclose or suggest the required combination of limitations of independent claims 1 and 35, the Examiner has failed to establish the required *prima facie* case of unpatentability for independent claims 1 and 35.

Harris fails to cure the deficiencies of Hawkins. On the contrary, Harris discloses an automated 401k trade processing system that interfaces omnibus customer trade transactions from a record keeping system to a transfer agent which executes the customer trade transactions and sends a trade-execution confirmation file to a host processor. See, e.g., Harris, Col. 1, lines 26-33 and Col. 16, Col. 16, lines 33-37. According to Harris, the host processor uses the trade-execution confirmation file in processing a mismatch report, i.e., if the transfer agent calculated a more favorable discount level that changed the price of the trade, or a higher commission than anticipated, or if there is a difference in the transfer agent's Letter of Intent amount, the host system generates a "mismatch" file. See, e.g., Harris, Col. 9, lines 11-38. There is no teaching or suggestion whatsoever in Harris of matching rules, much less of allowing a fund manager and a custodian to predefine matching rules, as recited in independent claims 1 and 35.

Consequently, Hawkins and/or Harris, either separately or in combination with one another, fail to disclose or suggest the required combination of limitations of independent claims 1 and 35 of Applicants' claimed method and system for reconciliation of fund manager and custodian account records. Because the cited references, either alone or in combination with one another, fail to teach or suggest all of the limitations of independent claims 1 and 35, the Examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (C.C.P.A., 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); See also MPEP §2143.03. The Examiner has failed to establish the required *prima facie* case of unpatentability for independent claims 1 and 35 and similarly has failed to establish a *prima facie* case of unpatentability for claims 2-4, 8, 10, and 26 that depend on claim 1 and claims 39, 41, 46 and 49 that depend on claim 35, and which recite further specific elements that have no reasonable correspondence with the references.

**The Rejection of Claims 21 and 23 as
Obvious Over Hawkins in view of Josephson Is Improper**

Claims 21 and 23 depending on independent claim 1 stand rejected as obvious over Hawkins in view of Josephson. As previously noted, because Hawkins fails to disclose or suggest the required combination of limitations of independent claim 1, the Examiner has failed to establish the required *prima facie* case of unpatentability for independent claim 1.

Josephson likewise fails to cure the deficiencies of Hawkins. On the contrary, Josephson discloses a check processing system that reads magnetic ink characters, such as account number, ABA routing number, process control or serial number, auxiliary on-us or serial number, and external process code, printed on paper checks and bank deposit slips. See, e.g., Col. 4, lines 9-50. According to Josephson, system code directs the processing system to match the magnetic ink characters printed on checks to an electronic record according to system dictated matching rules, including an allowed number of character deviations in the fields, an allowed substitution of characters in the fields, or a pattern or sequence of adjoining records. See, e.g., Josephson, Col. 4, lines 9-50; Col 8, line 61-Col. 9, line 8; and Col. 11, line 59-Col. 12, line 1-59. There is likewise no teaching or suggestion whatsoever in Harris of allowing a fund manager and a custodian to predefine matching rules independently of one another, as recited in independent claims 1 and 35.

Consequently, Hawkins and/or Josephson, either separately or in combination with one another, fail to disclose or suggest the required combination of limitations of independent claim 1 of Applicants' claimed method for reconciliation of fund manager and custodian account records. Because the cited references, either alone or in combination with one another, fail to teach or suggest all of the limitations of independent claim 1, the Examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (C.C.P.A., 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); See also MPEP §2143.03. The Examiner has

failed to establish the required *prima facie* case of unpatentability for independent claim 1 and similarly has failed to establish a *prima facie* case of unpatentability for claims 21 and 23 that depend on claim 1, and which recite further specific elements that have no reasonable correspondence with the references.

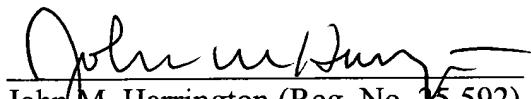
(9) Conclusion

For at least the reasons given above, the rejections of claims 1-4, 8, 10-15, 17-21, 23, 26, 30-35, 39, 41-43, 46, and 49-51 are improper. Applicant respectfully requests the final rejection by the Examiner be reversed and claims 1-4, 8, 10-15, 17-21, 23, 26, 30-35, 39, 41-43, 46, and 49-51 be allowed. Attached below is an Appendix of claims 1-4, 8, 10-15, 17-21, 23, 26, 30-35, 39, 41-43, 46, and 49-51 for ease of reference.

Respectfully submitted,

Date: 6/22/06

By:


John M. Harrington (Reg. No. 25,592)
For George T. Marcou (Reg. No. 33,014)

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CLAIMS APPENDIX

1. A method for reconciliation of fund manager and custodian account records, comprising:

receiving a first account record by a database electronically from one of an internal portfolio tracking system of a fund manager and a custody network of a custodian and receiving a second account record by the database from the other of the internal portfolio tracking system of the fund manager and the custody network of the custodian;

allowing the fund manager and the custodian to predefine matching rules for the respective account records independently of one another;

automatically comparing the account records by a computer application according to the predefined matching rules for at least one item of account data selected from a group of account data items consisting of account number, security identification, units, unit cost, total cost, unit price, and total market value to identify one of matched and unmatched first and second account records; and

if unmatched account records are identified in the comparison, generating a report of the comparison by the computer application identifying the unmatched account records accessible for display by the fund manager and the custodian, allowing a manual match of the unmatched account records on the database by either one of the fund manager and the custodian, and storing an historical record of the manual match by the computer application accessible by either one of the other of the fund manager and the custodian.

2. The method of claim 1, wherein receiving the account records further comprises receiving the first and second account records for one of a position and a transaction.

3. The method of claim 2, wherein receiving the account records for the position further comprises receiving the first and second account records for one of a securities position and a cash position.
4. The method of claim 2, wherein receiving the account records for the transaction further comprises receiving the first and second account records for one of a securities transaction and cash transaction.
8. The method of claim 1, wherein receiving the account record electronically from the custody network of the custodian further comprises receiving the account record electronically via a proprietary financial network.
10. The method of claim 1, wherein receiving the account records by the database further comprises receiving the account records by a service bureau database.
11. The method of claim 1, wherein automatically comparing the account records further comprises uploading the account records to the database.
12. The method of claim 11, wherein uploading the account records further comprises formatting the account records.
13. The method of claim 12, wherein uploading the account records further comprises parsing the account records.
14. The method of claim 13, wherein uploading the account records further comprises validating the account records.
15. The method of claim 11, wherein uploading the account records further comprises uploading the account records according to a predefined schedule.
17. The method of claim 1, wherein predefining the matching rules further comprises predefining available match groups for the fund manager and the custodian.

18. The method of claim 1, wherein predefining the matching rules further comprises predefining the matching rules for the account records for at least one of a position and a transaction.
19. The method of claim 18, wherein predefining the matching rules further comprises predefining substantially similar matching rules for the account records for the position and transaction.
20. The method of claim 18, wherein predefining the matching rules further comprises predefining different matching rules for the account records for the position and transaction.
21. The method of claim 1, wherein predefining the matching rules further comprises predefining matching criteria in terms of a tolerance in at least one of percentage terms and nominal terms.
23. The method of claim 1, wherein predefining the matching rules further comprises predefining the matching rules in terms of levels of match success.
26. The method of claim 1, wherein generating the report further comprises allowing at least one of the fund manager and the custodian to download the report in a file.
30. The method of claim 1, wherein displaying the report further comprises displaying the unmatched first and second account records simultaneously for either one of the fund manager and the custodian on a consolidated screen.
31. The method of claim 1, wherein displaying the report further comprises prompting either one of the fund manager and the custodian for entry of the manual match.
32. The method of claim 1, wherein allowing the manual match further comprises identifying a reason for the manual match.

33. The method of claim 32, wherein identifying the reason further comprises storing a record of the reason for the manual match.
34. The method of claim 33, wherein storing the record further comprises allowing a retrieval of the record of the reason for the manual match.
35. A system for reconciliation of fund manager and custodian account records, comprising:
 - a computer database adapted for receiving a first account record electronically from one of an internal portfolio tracking system of a fund manager and a custody network of a custodian and for receiving a second account record from the other of the internal portfolio tracking system of the fund manager and the custody network of the custodian;
 - a computer application preprogrammed for automatically comparing the received account records according to matching rules, which the fund manager and the custodian are allowed to predefine for the respective account records independently of one another, for at least one item of account data selected from a group of account data items consisting of account number, security identification, units, unit cost, total cost, unit price, and total market value to identify one of matched and unmatched first and second account records; and
 - wherein if unmatched account records are identified in the comparison, the computer application is further preprogrammed for generating a report of the comparison identifying the unmatched account records accessible for display by the fund manager and the custodian, for allowing a manual match of the unmatched account records on the database by either one of the fund manager and the custodian, and for storing an historical record of the manual match accessible by either one of the other of the fund manager and the custodian.

39. The system of claim 35, wherein the computer database is further adapted for receiving the account records electronically via a proprietary financial network.

41. The system of claim 35, wherein the database further comprises a service bureau database.

42. The system of claim 35, wherein the database is further adapted for receiving an update of the account records.

43. The system of claim 42, wherein the means for uploading database is further adapted for receiving the update of the account records according to a predefined schedule.

46. The system of claim 35, comprising a terminal for displaying the report for a user.

49. The system of claim 46, wherein the computer application is further adapted for displaying the unmatched first and second account records simultaneously for the user on a consolidated display at the terminal.

50. The system of claim 35, wherein the computer application is further preprogrammed for storing a record of a reason for the manual match.

51. The system of claim 50, wherein the computer application is further preprogrammed for allowing retrieval of the record of the reason for the manual match.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None